



**European Financial
Markets Lawyers Group**

- The Chairman -

To the EFMLG members

25 February 2008

Contact person: Stéphane Kerjean
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Dear colleagues,

Re.: The future of the EFMLG (item 2 of the EFMLG meeting of 31.03.2008)

As you know, the EFMLG will celebrate its 10th year anniversary next year and I consider this occasion as an excellent opportunity to review with a critical eye the functioning and the activities of the EFMLG over the last years in order to continue to further improve the output and enhance the visibility of our group.

I recently pointed out that, since its inception in 1999, the EFMLG has constantly evolved into a lively, dynamic and effective group, the advice of which is unanimously praised and increasingly followed by policy makers and financial markets practitioners alike. Moreover, I believe that the inter-group coordination with financial lawyers groups from other financial centres (trilateral and quadrilateral meetings) has proven to be a valuable forum in order to exchange thoughts and experiences in our globalised world of finance.

I would like to devote some time at our next meeting to a self-assessment of the group and to examine whether there is a need to review our current rules and practices, i.e. the EFMLG mission statement (1.), the membership criteria (2.), the structure (3.), the functioning (4.) and the website (5.) of the group. For this purpose, you will find attached to this letter a (non-exhaustive) list of the issues that we could discuss in Athens. Any suggestions and/or comments are welcome.

Lastly and as indicated during our last meeting in Frankfurt last January and in order to celebrate in 2009 the 10th anniversary of our group, I would like to discuss with you my initial

proposal to prepare an EFMLG collective book on issues related to the legal integration of European financial markets (6.).

I look forward to discussing all these issues at our Athens meeting in March and I am confident that they will trigger stimulating thoughts to the benefit of our group.

Yours sincerely,

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above the name.

Antonio Sáinz de Vicuña

REFLECTIONS ON THE FUTURE OF THE EFMLG

1. Mission statement

The original purpose of the establishment of the EFMLG was to identify and promote initiatives which would lead to an enhanced legal harmonisation of the law and practices of financial market activity in the EU, particularly in the aftermath of the introduction of the euro. In this respect, although important progress has been made over the last years with regard to the legal integration of European financial markets both from a regulatory and market practices viewpoint, these markets continue to be hampered by the absence of a truly single legal framework and the heterogeneity of documentation practices. Therefore, also taking into account constant financial innovations and new risks, the EFMLG initiatives aiming to foster harmonisation of rules and market practices and increase legal certainty are nowadays still more than necessary. With the increasing globalisation and sophistication of financial markets, the EFMLG has closely observed and/or supported certain on-going legal initiatives taken on an international scale. Also, processes of convergence of market practices initiated between the EU and other countries in the financial sector, for instance with the USA or Japan, would require increased attention.

The EFMLG has operated without a defined mandate, since the original idea was to emphasise the informal and market-based nature of the group. However, already for a long time, the EFMLG has a mission statement on its website which outlines the reasoning behind its establishment, its scope of activities and co-operation with other relevant groupings and which is published on the EFMLG website. The EFMLG is invited to discuss whether a revision and/or a formal adoption of the EFMLG mission statement is needed. While the formal adoption of an EFMLG Charter would enhance the legal status of the EFMLG, it would also imply more visibility for the group and responsibility for enhanced output for all members.

Question: Is there a need to revise and formally adopt the mission statement of the EFMLG (including its scope) and to enhance its legal status, for instance, with the adoption of an EFMLG Charter?

2. Membership criteria

EFMLG members are senior legal experts drawn from participants in the financial markets and are selected, on the basis of their personal experience and their dedication to contribute to the activities of the group, amongst lawyers of –or appointed by– the banks represented in the Euribor and Eonia panels. The composition of the EFMLG is unique in that it is the only known pan-European grouping of financial market lawyers whose composition allows it to express opinions on financial legal matters arising under EU and national law. As such, this

gives the EFMLG considerable authority and standing. Whilst the members participate in the work of the group on a personal basis and on the basis of their personal expertise and their availability to pro-actively contribute to the activities of the group, they are supported by the institution to which they belong. Therefore, it is important that EFMLG members ensure a function of relay between the group and the top management of the legal services of their respective institutions and thus exercise a regular reporting internally.

Questions:

- *Is there a need to review the membership criteria of the group (in particular for the banks to be part of the above panels)?*
- *How should be tackled the issue of the representation of members/banks from new Member States in the group?*
- *Should the chairman (and, if decided, see below, the vice-chairman,) have a time-limited mandate?*
- *What would be the adequate level of seniority of members?*
- *Are general counsels regularly briefed on EFMLG activities?*

3. Structure of the EFMLG

The Group is chaired by the Director General of the ECB Legal Services. The Secretariat of the group is ensured by the ECB. Legal experts from some NCBs attend the meetings of the group as observers.

Questions:

- *Are you satisfied with the current structure? Should a position of vice-chairman (to be allocated to a non-ECB EFMLG member) be created and what would be his functions?*
- *Could observers from other institutions, e.g. the European Commission improve the effectiveness of the group?*
- *What should be the rules regarding substitutions or alternates?*

4. Functioning of the EFMLG

The Group usually meets in plenary composition four times a year (generally twice in Frankfurt am Main, one in another EU Member State and the trilateral/quadrilateral meeting). One or two meetings are generally hosted by the ECB, the others by non-ECB members' institutions. Ad hoc sub-groups meet where necessary and without formal arrangements to elaborate on a given topic. They are composed of a smaller number of EFMLG members on a voluntary basis. It is important to ensure a balanced participation of all members to the work of sub-groups.

Questions:

- *Is the number and place of meetings satisfactory?*
- *Should non-ECB EFMLG members host meetings more frequently?*
- *Should some rules of procedure be adopted for the EFMLG? (E.g. to codify in a transparent manner –i.e. our website- current arrangements but to reflect new ones, e.g. the vice-chairmanship, sub-group chairs, etc.)*
- *How to ensure a balanced participation of all EFMLG members in the various sub-groups?*
- *Are there any suggestions regarding the organisation and functioning of trilateral/quadrilateral meetings?*

5. EFMLG website

Questions:

- *Should the EFMLG develop the practice of inserting links with other groupings (for instance, ECB market contact groups such as the ECB Money Market Contact Group, the ECB Foreign Exchange Contact Group (<http://www.ecb.int/paym/html/index.en.html>) or even market associations with which the EFMLG has developed joint actions? What should be the rule in this field?*
- *Are there any improvements required on the EFMLG website?*

6. Preparations of the 10th anniversary of the EFMLG

The Group agreed at its 25 January 2008 meeting in Frankfurt to explore the possibility of preparing an EFMLG collective book to celebrate the 10th anniversary of the EFMLG. Such an initiative would further increase the external visibility of the group and provide an overview of the work accomplished by the group over the last years. This book would be devoted to legal issues relating to the integration of European financial markets, would be written in English only and published in 2009. It should be decided whether it could contain collective contributions from EFMLG sub-groups, in addition to contributions of individual members.

Questions:

- *Which members could commit to write a (individual or joint) contribution in English in the given timeframe (until summer 2009)? Members are invited to provide their suggestions/ topics for the contributions to the book, and to its general content.*

- *In addition to EFMLG members, should other interested contributors be invited to participate? According to which criteria? Please provide specific details of any such contributors that you consider should be invited to submit contributions.*
- *What could be the potential sources of financing for this book (editing, composition, and printing)? Do you consider that all members of the EFMLG should bear an equal share of the financing or should financing be offered by a sponsoring institution?*
- *Should the book only be published electronically in our website? If not, how many copies of the book should be produced? How many copies would you require for yourself and for colleagues/contacts?*
- *Who –supported by his/her institution- would volunteer for the task of coordination of this book?*
- *Should other groupings/associations (such as the AEDBF) be invited to participate to this project should they wish to?*
- *Should an Editorial Board be constituted, to ensure consistency, avoid overlapping, and provide improvement suggestions to the authors? If so, would you be willing to volunteer?*